(17656.)

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 213.

WILLIAM B. TYLER, *Plaintiff in Error*,

v.

THE JUDGES OF THE COURT OF REGISTRATION.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

SUPPLEMENTAL BRIEF FOR THE DEFENDANTS IN ERROR.

HOSEA M. KNOWLTON,
Attorney-General.

FRANKLIN T. HAMMOND,
Assistant Attorney-General.

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I.

The power of this court to review the decree of the court below depends upon United States Revised Statutes, § 709, which is as follows: —

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission

held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party, under such Constitution, treaty, statute, commission or authority may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States.

"The Supreme Court may reverse, modify or affirm the judgment or decree of such state court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ."

It is contended that in the present case there is drawn in question the validity of a statute of the Commonwealth of Massachusetts on the ground of its being repugnant to the Constitution of the United States, and, the decision of the state court having been in favor of its validity, that this court has power to re-examine such decision.

This court has frequently defined what it is to draw in question the validity of a statute.

In *Baltimore & Potomac Railroad* v. *Hopkins*, 130 U. S. 210, 224, Mr. Chief Justice Fuller said: "Whenever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise."

In *United States* v. *Lynch*, 137 U. S. 280, 285, the court, speaking through the same judge, said: "The validity of a statute, or the validity of an authority, is drawn in question when the existence or constitutionality or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry."

See also *Miller* v. *Cornwall Railroad Co.*, 168 U. S. 131, 133.

It is not necessary to the jurisdiction of this court that the validity of a state statute be drawn in question by a plaintiff in error who claims to have been deprived by the decision of the lower court of a right or immunity derived from the

clause of the Federal Constitution, to which he alleges the statute in question to be repugnant. It is sufficient if the statute in its necessary intendment and operation is claimed to be invalid because violative of rights secured to others by the Constitution, even if in the particular case in which the question is raised the plaintiff in error suffers no deprivation of such rights.

In this connection it is vitally important to distinguish between two of the three categories within which a suit must come in order to warrant the exercise of the jurisdiction of this court under Rev. Sts., § 709. The categories are stated by Mr. Justice Swayne in *Home Insurance Company* v. *City Council*, 93 U. S. 116, 121, as follows: —

"Where a judgment or decree is brought to this court by a writ of error to a state court for review, the case to warrant the exercise of jurisdiction on our part must come within one of three categories: —

"1. There must have been drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, and the decision must have been against the claim which either was relied upon to maintain.

"2. Or there must have been drawn in question a statute of, or authority exercised under, a state upon the ground of repugnance to the Constitution or a law or treaty of the United States, and the decision must have been in favor of the validity of the state law or authority in question.

"3. Or a right must have been claimed under the Constitution or a treaty or law of, or by virtue of a commission held or authority exercised under, the United States, and the decision must have been against the right so claimed."

It is true that in the class of cases included within the third category above described this court will not entertain jurisdiction unless the right claimed under the Constitution, treaty, statute or authority of the United States is asserted by a plaintiff in error who claims the right or title for himself.

"It is well settled that in order to give this court jurisdiction to review a judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must

be one of the plaintiff in error, and not of a third person only." Gray, J., in *Giles* v. *Little*, 134 U. S. 645, 650.

See also *Long* v. *Converse*, 91 U. S. 105.
Montgomery v. *Hernandez*, 12 Wheat. 129, 132.
Ludeling v. *Chaffe*, 143 U. S. 301.
Miller v. *Lancaster Bank*, 106 U. S. 542.
Conde v. *New York*, 168 U. S. 642.

This court has several times applied this principle in cases of ejectment where the defendant set up an outstanding title in a third person under a treaty of the United States. In these cases it has held that it has no power to review the decree of a state court because the statute (Rev. Sts. § 709) was intended to protect the person who "set up or claimed" the title for himself, and not to protect a person claiming no title for himself under the treaty.

Owings v. *Norwood's Lessee*, 5 Cranch, 344.
Henderson v. *Tennessee*, 10 How. 311.
Hale v. *Gaines*, 22 How. 144, 160.

But this principle depends upon the peculiar language of that part of the statute which relates to rights or immunities claimed under the Constitution, treaties, statutes or authority of the United States, the act requiring that the decision should be against such title or right "specially set up or claimed by either party under such Constitution, treaty, statute, commission or authority." The phrase quoted does not qualify the preceding clauses of the statute relating to suits in which the validity of treaties, or statutes of, or authorities exercised under, the United States, or statutes of or authorities exercised under any of the states, is drawn in question. The two categories of cases are quite distinct, and the requirement that the right or immunity claimed to be denied must be a right belonging to the plaintiff in error, applies only to the third category mentioned above. This proposition is asserted after an extended examination of the decisions of this court which has resulted in the failure to find any case in which it has held that the requirement above named applies to a case in which the validity of a statute of a state is drawn in question. In all

of the cases supporting the proposition that the plaintiff in error in order to be entitled to resort to this court must claim a right or title of his own under the Constitution or a treaty or law of the United States, which, he asserts, the judgment of a state court denies to him, there was no question of the validity of any statute.

But a case may come within two of these categories. Such a case was *Home Insurance Co. v. City Council*, 93 U. S. 116, 121, where an authority exercised by the city council under the state and in pursuance of a tax ordinance was drawn in question, on the ground of its being repugnant to the Federal Constitution, and a right was also claimed under the Federal Constitution. It was there held that the case was within two of the categories above named.

The fact that the validity of the statute involved in this case is drawn in question as being repugnant to a provision of the Constitution, which not only forbids legislation against its provisions, but also invalidates any action of the judicial or executive departments of a state government violating its provisions, and therefore may itself give affirmative rights and immunities, is not material. In the present case the plaintiff in error does not rely upon any such rights or immunities, but merely draws in question the validity of the act.

II.

The present case is a petition for a writ of prohibition to restrain the defendants in error from entertaining an application for registration of title to land. The only question involved is that of the jurisdiction of the Massachusetts Court of Land Registration.

In re Morrison, 147 U. S. 14, 33.
In re Cooper, 143 U. S. 472, 495.

The plaintiff is the owner of land adjoining the land the title to which is sought to be registered, and the boundaries of which are sought to be determined. He is, therefore, a party interested in the proceedings, and his rights will be adjudicated upon by determining the boundary between his land and the land of the applicant, if the court has jurisdic-

tion. He asserted below and still asserts that the Court of Land Registration has no jurisdiction because the entire statute under which it is created is repugnant to the Federal Constitution. The court below has entered a final decree in favor of the validity of the statute. The case, therefore, necessarily turns upon the question of the validity of this statute which is directly drawn in question.

It is immaterial that after final judgment by the Court of Land Registration the petitioner may have a remedy by appeal. In a case where a writ of prohibition was sought to restrain county commissioners from proceeding to assess damages for the taking of land under a statute alleged to be unconstitutional (*Connecticut River Railroad Co.* v. *County Commissioners*, 127 Mass. 50), Mr. Chief Justice Gray said (p. 59):—

"In the present case, if the proceedings for the assessment of damages had gone on to final judgment they might indeed have been quashed by writ of certiorari. But the fact that the remedy by petition for writ of certiorari will be open to the land owner after final judgment affords no reason why the court should now refuse a writ of prohibition and thereby put the petitioner to the trouble, expense and delay of a trial before a tribunal which has no jurisdiction of the case, and to whose jurisdiction the petitioner has objected at the outset of the proceedings."

III.

It is impossible to support the statute against the plaintiff so as to declare its validity in authorizing a judgment binding upon him without also supporting the authority which the statute gives to the court to enter a judgment binding upon all persons interested. If this court is of the opinion that the provisions of the statute, providing that the decree of original registration shall bind every one interested, are invalid as to certain persons but valid as to others, then the entire statute is invalid. The essential purpose of the provisions making the decree of registration conclusive against all the world is to render the title so declared indefeasible, because based upon a decree importing absolute verity. If

there are any persons who are not concluded by the decree the certificate of title cannot be given the effect which the statute declares that it shall have, to wit: that it shall be "received as evidence in all the courts of the Commonwealth, and shall be conclusive as to all matters contained therein except so far as otherwise provided" (§ 47); that every applicant receiving a certificate of title "shall hold the same free from all incumbrances except those noted on the certificate" and certain enumerated rights (§ 39); and that the decree of registration "shall be conclusive upon and against all persons, including the Commonwealth, whether mentioned by name in the application, notice or citation, or included in the general description 'to all whom it may concern'" (§ 38).

One of the essential features of the system of land transfer embodied in this statute is that the title is conclusively declared once for all by a judicial proceeding, establishing and confirming it absolutely and against all the world, after the most complete and general notice possible. It is a necessity, and, indeed, the life of the system, that all persons should be concluded by the decree. To hold otherwise would be to make a law which the Legislature of Massachusetts never intended to enact.

In *Poindexter* v. *Greenhow*, 114, U. S. 270, 304, the court, through Mr. Justice Matthews, said: "It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional and another be declared inoperative and void because unconstitutional, but these are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see and to declare that the intention of the Legislature was that the part pronounced valid should be enforceable, even if the other part should fall. To hold otherwise would be to substitute for the law intended by the Legislature one they may never have been willing by itself to enact."

In *Spraigue* v. *Thompson*, 118 U. S. 90, 95, where it was urged that certain illegal exceptions in a section of the statute might be disregarded, but that the rest could stand, the same eminent judge said: "The insuperable difficulty to

the application of that principle of construction to the present instance is that by rejecting the exceptions intended by the Legislature of Georgia the statute is made to enact what confessedly the Legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions."

In *United States* v. *Rees*, 92, U. S. 214, the question raised was whether a penal statute enacted by Congress which was broad enough to punish wrongful acts without, as well as within, the constitutional jurisdiction, could be limited by a judicial construction so as to make it operate only on that which Congress might rightfully prohibit and punish. It was held that this court had no power so to limit the statute; that the language of it was so plain that there was no room for construction; and that to limit it to a particular class when it was expressly declared to be general would be to make a new law and not to enforce an old one.

In the *Trade-mark Cases*, 100 U. S. 82, there was drawn in question the validity of an act of Congress regulating trade-marks, which was not limited in terms to their use in commerce with foreign nations and among the states, but was intended to embrace all commerce, including that between citizens of the same state. It was suggested that if Congress might regulate trade-marks used in interstate commerce, the statute should be given effect in that class of cases and no other; and that since the general description in the statute included the more limited one it might be valid to the extent of this limited portion. But it was held that "While it may be true that when one part of a statute is valid and constitutional, and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body."

See also *Pollock* v. *Farmers' Loan and Trust Co.*, 158 U. S. 601, 635–6.

From these authorities it is apparent that if this court should hold the provisions of the act making the decree of registration conclusive as to all persons interested invalid, and should hold that certain persons might not be concluded by the decree of registration, then all the provisions relating to the original registration would fall, and the Court of Land Registration would have no jurisdiction over this plaintiff in error although he has been denied no rights secured by the Fourteenth Amendment.

The question is squarely raised, therefore, in this case, whether the provisions of the act making the decree of registration conclusive against all the world are valid. If there is any point as to jurisdiction which the defendants in error have the power to and may properly waive they do so, and for the reasons above given respectfully ask the court to proceed to judgment upon the merits.

Pollock v. *Farmers' Loan and Trust Co.*, 157 U. S. 429, 554.

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